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12 *Attorneys for Defendants SmileDirectClub, Inc.;*
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14 *Jeffrey Sulitzer, D.M.D., P.C.*

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 Arnold Navarro, et al.,

18 Plaintiffs,

19 v.

20 SmileDirectClub, Inc., et al.,

21 Defendants.

Case No. 3:22-cv-00095-WHO

Judge: Hon. William H. Orrick

JOINT CASE MANAGEMENT STATEMENT

Date Removed: January 6, 2022

1 Pursuant to this Court's Order dated June 1, 2022, the Parties submit this Case Management
2 Statement.

3 **DEFENDANTS' STATEMENT:**

4 On September 15, 2022, Navarro filed an arbitration demand with two counts for declaratory relief
5 to determine whether the dispute is arbitrable and a third count asking, if the first two counts were decided
6 against Navarro, to resolve the substantive dispute presented in the First Amended Complaint filed with
7 this Court. The demand named SmileDirectClub, Inc. and SmileDirectClub, LLC (collectively, "SDC
8 entities") as respondents.

9 The AAA appointed Hon. Michael J. Seng (ret.) as an arbitrator on April 28, 2023. After a
10 preliminary hearing, briefing, and argument, Arbitrator Seng issued an Order on August 21, 2023
11 concluding that the dispute is arbitrable. In Navarro's original brief, he raised an argument regarding the
12 AAA's Health Care Due Process Protocol. He withdrew that argument in his reply brief.

13 Navarro filed a second Demand for Arbitration with the AAA on September 8, 2023, this time
14 naming the SDC entities, plus Dr. Jeffrey Sulitzer, and Sulitzer P.C. as respondents. Navarro's second
15 arbitration demand pursues the same seven substantive claims identified in the first arbitration demand
16 and in the First Amended Complaint filed in this Court.

17 Arbitrator Seng held a telephonic status conference on September 11, 2023. Respondents objected
18 to Plaintiff's filing his second Demand for Arbitration while the first demand remained pending. At the
19 hearing, Arbitrator Seng ordered simultaneous informal briefing on whether discovery should be permitted
20 before briefing on the issue of clause construction, under Rule 3 of the AAA's Supplementary Rules for
21 Class Arbitration. Arbitrator Seng reiterated that order in his Second Management Order, dated
22 September 11, 2023. He did not suggest in that order that he had any question whether the arbitration
23 would proceed, nor did he suggest that Navarro had sought to dismiss his first arbitration demand (the
24 only one being actively arbitrated). The parties submitted their briefs on September 25, 2023.

25 Plaintiff has not filed any written request to dismiss the first arbitration demand. Defendants do
26 not recall a formal oral request, either. Instead, Defendants' recollection is that at the hearing, the
27 Arbitrator offered Plaintiffs the opportunity to move to amend their demand, but Plaintiff's counsel
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1 resisted that offer, contending that there were no active claims before the Arbitrator. Defendants further
2 recall that when Plaintiff's counsel suggested that if any claims remained before the Arbitrator, he might
3 move to dismiss them, the Arbitrator warned him that dismissing them would risk a dismissal with
4 prejudice.

5 Arbitration proceedings are currently stayed under the Bankruptcy Code's automatic stay. On
6 September 29, 2023, SmileDirectClub, Inc.; SmileDirectClub, LLC; and certain affiliated entities (each a
7 "Debtor" and collectively, the "Debtors") filed a voluntary petition for reorganization in the U.S.
8 Bankruptcy Court for the Southern District of Texas. Arbitration proceedings are currently stayed as
9 against the Debtors under the Bankruptcy Code's automatic stay. On October 3, 2023, SmileDirectClub,
10 Inc. and SmileDirectClub, LLC filed a Notice of Suggestion of Bankruptcy with the AAA. On October
11 18, 2023, the AAA sent a letter notifying the parties that because the bankruptcy petition stays proceedings
12 automatically, the AAA was suspending administration of the matter.

13 Defendants have not in any way waived the Bankruptcy Code's automatic stay, as (a) proceedings
14 in this Court were stayed before the bankruptcy, (b) the AAA has stayed substantive proceedings in light
15 of the bankruptcy, (c) Defendants have not insisted on any proceedings on their substantive claims, and
16 (d) Defendants have not intentionally relinquished any rights under the automatic stay. Currently no
17 motion for relief from stay has been granted by the Bankruptcy Court. Regardless, out of an abundance
18 of caution, Defendants will file a Suggestion of Bankruptcy on the docket.

19 **PLAINTIFF'S STATEMENT:**

20 On September 15, 2022, Plaintiff Arnold Navarro ("Plaintiff") filed an arbitration demand stating
21 certain causes of action. The demand named SmileDirectClub, Inc. and SmileDirectClub, LLC
22 (collectively, "SDC entities") as respondents.

23 The AAA appointed Hon. Michael J. Seng (ret.) as an arbitrator on April 28, 2023. After a
24 preliminary hearing, briefing, and argument, Arbitrator Seng issued an Order on August 21, 2023. The
25 Arbitrator did not decide whether the case lacked arbitrability for failure to have the AAA informed
26 consent document.

27 Plaintiff filed a second Demand for Arbitration with the AAA on September 8, 2023, this time
28

1 naming the SDC entities, plus Dr. Jeffrey Sulitzer, and Sulitzer P.C. as respondents, and adding claims,
 2 and has sought to raise with AAA administratively, that the dispute is not arbitrable based on the lack of
 3 entering into an applicable AAA informed consent document.

4 Arbitrator Seng held a telephonic status conference on September 11, 2023. Respondents have
 5 objected to Plaintiff's filing his second Demand for Arbitration while the first demand remained pending.
 6 The regarding lack of arbitrability based on a lack of health care protocol has not been ruled on
 7 administratively or otherwise by the AAA. At the hearing, Arbitrator Seng ordered simultaneous informal
 8 briefing on whether discovery should be permitted before briefing on the issue of clause construction,
 9 under Rule 3 of the AAA's Supplementary Rules for Class Arbitration, assuming such arbitration even
 10 goes forward. The parties submitted their briefs on September 25, 2023. Plaintiff also has a request to
 11 dismiss the first arbitration demand given the arbitrator ruled on the only issues before him. The request
 12 to dismiss the first arbitration has not been adjudicated.

13 Navarro points out that the bankruptcy defendants failed to file a suggestion or notice of
 14 bankruptcy in accordance with the Northern District Rules and believes that Defendants' insistence on
 15 proceeding reflects a waiver of the automatic stay. Currently no motion for relief from stay has been
 16 granted by the Bankruptcy Court.

17
 18 Respectfully submitted,

19 DATED: December 1, 2023

LINDEMANN LAW FIRM, APC

20 /s/ Blake J. Lindemann (with permission)

21 BLAKE J. LINDEMANN

22 Attorneys for Plaintiffs

23 ARNOLD NAVARRO AND ALL THOSE
 SIMILARLY SITUATED

24 DATED: December 1, 2023

BENESCH FRIEDLANDER COPLAN
 ARONOFF LLP

25 /s/ Michael Dominic Meuti

26 Michael Dominic Meuti

27 Attorney for Defendants

28 SmileDirectClub, Inc.; SmileDirectClub, LLC;
 Jeffrey Sulitzer; and Jeffrey Sulitzer, D.M.D., P.C.

ATTESTATION

I, Michael Dominic Meuti, am the ECF user whose identification and password are being used to file this Joint Case Management Statement.

Opposing counsel consented to adding his signature to a prior version of this document that did not contain the paragraph spanning page 2, line 25 through page 3, line 4. During the exchange of drafts, opposing counsel had reviewed a version of the Joint Case Management Statement that contained that text in a footnote and did not object to the substance of that footnote. After adding that paragraph, counsel for Defendants twice emailed and called Navarro's counsel regarding that addition, but Navarro's counsel did not timely respond to the email requesting that he reaffirm his consent to the inclusion of this paragraph in the Joint Case Management Statement. I informed Navarro's counsel that I would file this statement with the inclusion of the paragraph.

I attest under penalty of perjury that concurrence in this filing has been obtained from all signatories above with the caveat described above.

DATED: December 1, 2023

/s/ Michael Dominic Meuti